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**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

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Joint Application of)

AMERICAN AIRLINES, INC.)

and)

LINEA AEREA NACIONAL CHILE,)
S.A. (LAN CHILE))

Docket OST-97-3285 -50

under 49 U.S.C. §§ 41308 and 41309 for)
approval of and antitrust immunity)
for alliance agreement)

**ANSWER OF LAN CHILE, S.A.
TO MOTION OF CONTINENTAL AIRLINES, INC.**

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Dated: May 12, 1999

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**ANSWER OF LAN CHILE, S.A.
TO MOTION OF CONTINENTAL AIRLINES, INC.**

Lan Chile, S.A. (“Lan Chile”) submits this answer in opposition to the motion of Continental Airlines, Inc., for an open-ended extension of the time to file objections to the Department’s Order to Show Cause (Order 99-4-17). Continental’s motion is ill-considered and far-fetched. Continental asks the Department to take an extraordinary step that is wholly unwarranted and can only jeopardize the excellent bilateral relations between the United States and Chile. The motion must be denied.

In opposition to Continental’s motion, Lan Chile states as follows.

1. Continental argues that “the Department should not rush to grant American and Lan Chile antitrust immunity.”¹ Instead, Continental asks the Department to stay any further

¹ Motion of Continental Airlines, Inc., at 4.

action in this proceeding for an indefinite period, i.e., until 60 days after a new bilateral agreement between the United States and Argentina “is reached.”

It is demonstrably absurd to suggest that the Department needs to avoid a “rush” to judgment in this case. It is now over 18 months since Lan Chile and American filed codeshare-related applications with the Department. It is now over 18 months since the United States and Chile initialed an open skies agreement that will, once implemented, open the U.S.-Chile market to all U.S. carriers without restriction. It is now over 16 months since Lan Chile and American filed their joint application for approval and antitrust immunity. During that time, the U.S. Government conducted an exhaustive investigation and review of the joint application and the proposed joint operations. The Department’s Order to Show Cause reflects the Government’s lengthy analysis and concludes correctly that the Lan Chile-American applications should be granted.

2. Continental’s suggestion that the United States should directly link the implementation of the U.S.-Chile open skies agreement to developments in the U.S.-Argentina bilateral relationship is outrageous. Continental’s motion, if granted, would be dangerous as a matter of policy, could seriously harm U.S. relations with Chile and would call into question the credibility of the U.S. Government in dealings with countries in Latin America and around the world.

The Governments of Chile and the United States initialed an open skies agreement in October 1997. This agreement is one of the 33 open skies agreements recently hailed by Deputy Secretary Downey:

More open skies agreements mean that U.S. airlines can enter new markets and can improve and expand existing services. Open skies agreements have provided powerful new incentives for airlines to be creative and provided customers with price and service options.²

The U.S.-Chile agreement is, at last, on the verge of being implemented. Continental, however, would have the United States put that agreement “on hold” while the United States attempts to reach an agreement with Argentina. In so many words, Continental is asking the United States to hold Chile hostage pending negotiations with Argentina. If Argentina reaches an appropriate agreement with the United States, one must presume, then the U.S.-Chile agreement could go forward. On the other hand, if no agreement with Argentina is reached, then the U.S.-Chile agreement becomes a nullity.

The United States could not conceivably consider participating in such a bizarre transaction. If the Department were to grant Continental’s motion, this would send an undeniable signal to the Government of Chile that the United States considers U.S.-Chile relations to be secondary and subsidiary to U.S.-Argentina relations. Such a step would do an intolerable disservice to Chile, the first South American country to initial an open skies agreement with the United States.

Such a step would also be a policy disaster. Although there is no linkage between U.S.-Chile and U.S.-Argentina aviation relations, it is fair to suggest that the U.S.-Chile open skies agreement has put political and economic pressure on Argentina to enter into a similarly liberalized agreement. This progressive, incentive-oriented policy of signing liberalized or open

² Mortimer L. Downey, Remarks before the Global Air & Space ‘99 Conference, Crystal City, VA, May 3, 1999, at 2.

skies agreements with one country with the expectation that pressure will be put on other countries to do the same has been an effective one for the United States in Europe and Asia.

Continental, however, would turn this policy on its head. Continental would have the United States delay (possibly forever) the implementation of an existing open skies agreement with one country until such time, if ever, as another country follows suit. Such a policy would be retrogressive, not progressive, and would create disincentives to Argentina, Chile and any number of other countries to enter into new agreements with the United States. Such a strategy also would have the perverse effect of putting the future of U.S.-Chile aviation relations in the hands of the Argentine Government and/or the hands of any interests in the United States or elsewhere that might successfully oppose a new U.S.-Argentina agreement.³

By the same token, to the extent the United States wants to view U.S.-Chile and U.S.-Argentina. relations in context, it should attempt to develop its relationship with Argentina in the context of what it has already achieved with Chile. The United States must not, as Continental urges, undo what has been achieved with Chile in the context of its effort to develop its relations with Argentina.

3. Granting Continental's motion would also set a dangerous precedent. Department proceedings could be forever challenged or subjected to delays by reference to unknown future developments in other, extraneous matters. This would have troubling implications for all carriers – U.S. and foreign – that depend on the Department's efficient consideration of their applications. Continental's own recent experience in the 1998 U.S.-Japan case should have

³ It is open to speculation how the U.S. open skies policy would have progressed in Europe and elsewhere if, in 1992, the Department had suspended implementation of the first open skies agreement, with the Netherlands, pending the attainment of a new bilateral agreement with the United Kingdom.

made it more sensitive to the implications of its motion. In that case, Delta and TWA argued that Continental should not receive any new “non-incumbent” carrier frequencies due to Northwest’s equity investment in Continental, which had rendered Continental an “alter ego” of Northwest, a “dominant incumbent” in the U.S.-Japan market. See Objection of Delta Air Lines, Inc., Objections of Trans World Airlines, Inc., March 26, 1998 (Docket OST-98-3419). Fortunately for Continental, the Department declined Delta/TWA’s invitation to withhold an award to Continental pending further review of the Continental/Northwest partnership, and awarded new “non-incumbent” frequencies to Continental. Order 98-5-17, May 7, 1998.

4. The Order to Show Cause already provides an answer period that is far longer than the periods provided in other antitrust immunity cases. The Order to Show Cause established a 28-day period in which interested parties may submit comments. e American/Canadian International case, the answer period was six days. Order 96-5-38 e United/Lufthansa case, the answer period was seven days. Order 96-5-12. In the Delta/Swissair/Sabena/Austrian case, the answer period was also seven days. Order 96-5-26. In the Northwest/KLM case, the answer period was 14 days. Order 92-11-27.⁴ Continental provides no legitimate reason for the Department to go beyond the already-generous 28-day answer period allowed by the Department.

5. Continental has had ample time and several opportunities to develop and submit every argument it could conceive of in this case, including any argument that it might have wanted to construct about the purported relevance of U.S.-Argentine relations to the pending

⁴ The Order to Show Cause in the United-Air Canada case provided a 28-day answer period, but the Department also directed the applicants to submit additional information, which the parties needed time to review. Order 97-6-30.

applications. The Order to Show Cause provides for two more opportunities to file pleadings. Although the Department is surely well aware of the status of the U.S.-Argentina relationship and of the regional significance of the U.S.-Chile open skies agreement,⁵ if Continental believes that the Department is in need of further guidance on the subject, Continental can submit its insights on May 20 in accordance with the schedule set by the Department.

In summary, the U.S.-Chile open skies agreement and the Lan Chile-American alliance have been held in abeyance for over 16 months. Now, rather than embracing the opportunities of open skies, Continental is seeking to hamstring U.S.-Chile liberalization by shackling the new U.S.-Chile agreement to the unknown prospects for a new U.S.-Argentina bilateral agreement. Such a move would be antithetical not only to U.S.-Chile relations and the U.S. open skies policy, but also to sound Department practice. Contrary to Continental's request, the Department should move quickly to a final order in this proceeding.

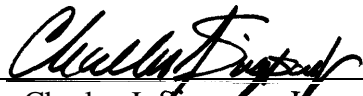
⁵ In that regard, the Department made the following observation in the Order to Show Cause:

Like an ever-growing number of other countries in Latin America and worldwide, the Government of Chile has shown its preference for open-market competition in aviation over a tightly constrained, highly restricted and regulated operating environment.

WHEREFORE, Lan Chile urges the Department to deny the motion of Continental Airlines, Inc. for an extension of time.

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Dated: May 12, 1999

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of May, 1999, a copy of the foregoing Answer of Lan Chile, S.A. was served by first class mail, postage prepaid, on the parties named below:

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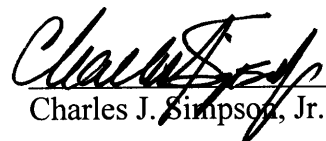
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